

# FACSIMILE COVER SHEET

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From: John C. Pokotylo, Esq.

Date: September 5, 2006

Number of Pages Including Cover: 7

MESSAGE: FORMAL SUBMISSION OF:

- 1) Fee transmittal (1 pg., in duplicate);  
and
- 2) Petition (4 pgs).

Attorney Docket No.: Juniper-10 (JNP-0044)

Appl. No.: 09/734,324

Applicant: Robert P. Enns

Filed: December 1, 2000

Title: COMPARING CONFIGURATION INFORMATION FOR A DATA FORWARDING DEVICE

TC/A.U.: 2145

Examiner: Thomas Duong

## CERTIFICATE OF FACSIMILE TRANSMISSION

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002/007

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Modified PTO/SB/17 (01-03)

Approved for use through 04/30/2003. OMB 0651-0032

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FEE TRANSMITTAL  
for FY 2006

Effective 12/08/2004. Patent fees are subject to annual revision.

 Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT (\$ 130.00)

Complete if Known

Application Number	09/734,324
Filing Date	December 1, 2000
First Named Inventor	Robert P. Enns
Examiner Name	Thomas Duong
Art Unit	2145
Attorney Docket No.	Juniper-10 (JNP-0044)

## METHOD OF PAYMENT (check all that apply)

 Check  Credit card  Money Order  Other  None Deposit Account:

Deposit Account Number	50-1049
Deposit Account Name	Straub & Pokotylo

The Commissioner is authorized to: (check all that apply)

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## FEE CALCULATION (continued)

## 3. ADDITIONAL FEES

Large Entity Small Entity

Fee Code (\$)	Fee Code (\$)	Fee Description	Fee Paid
1051 130	2051 65	Surcharge - late filing fee or oath	
1052 50	2052 25	Surcharge - late provisional filing fee or cover sheet	
1053 130	1053 130	Non-English specification	
1812 2,520	1812 2,520	For filing a request for ex parte reexamination	
1804 920*	1804 920*	Requesting publication of SIR prior to Examiner action	
1805 1,840*	1805 1,840*	Requesting publication of SIR after Examiner action	
1251 120	2251 60	Extension for reply within first month	
1252 450	2252 225	Extension for reply within second month	
1253 1,020	2253 510	Extension for reply within third month	
1254 1,590	2254 795	Extension for reply within fourth month	
1255 2,160	2255 1,080	Extension for reply within fifth month	
1401 500	2401 250	Notice of Appeal	
1402 500	2402 250	Filing a brief in support of an appeal	
1403 1,000	2403 500	Request for oral hearing	
1451 1,510	1451 1,510	Petition to institute a public use proceeding	
1452 500	2452 250	Petition to revive - unavoidable	
1453 1,500	2453 750	Petition to revive - unintentional	
1501 1,400	2501 700	Utility issue fee (or reissue)	
1502 800	2502 400	Design issue fee	
1503 1,100	2503 550	Plant issue fee	
Petitions to the Commissioner - check fee sheet			
1807 50	1807 50	Processing fee under 37 CFR 1.17(c)	
1806 180	1806 180	Submission of Information Disclosure Stmt	
8021 40	8021 40	Recording each patent assignment per property (times number of properties)	
1809 790	2809 395	Filing a submission after final rejection (37 CFR 1.129(a))	
1810 790	2810 395	For each additional invention to be examined (37 CFR 1.129(b))	
1801 790	2801 395	Request for Continued Examination (RCE)	
1802 900	1802 900	Request for expedited examination of a design application	
Other fee (specify) Petition			130.00
* Reduced by Basic Filing Fee Paid			SUBTOTAL (3) (\$ 130.00)

## SUBMITTED BY

(Complete if applicable)

Name (Print/Type)	John C. Pokotylo	Registration No. (Attorney/Agent)	36,242	Telephone	(732) 542-9070
Signature			Date	September 5, 2006	

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

This collection of information is required by 37 CFR 1.17 and 1.27. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, Washington, DC 20231.

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IN THE UNITED STATES  
PATENT AND TRADEMARK OFFICE

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Title: COMPARING CONFIGURATION INFORMATION FOR A DATA  
FORWARDING DEVICE

TC/A.U.: 2145

Examiner: Thomas Duong

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

PETITION UNDER 37 C.F.R § 1.144

Sir:

The applicant petitions the Director to direct the Examiner to withdraw the Restriction Requirement made final in Paper No. 200605256.

REMARKS/ARGUMENTS

In response to the Restriction Requirement mailed on January 23, 2006, (Paper No. 01052006), the applicant elected, with traverse, the claims of Group II. That is, the applicant elected, with traverse, claims 10, 13, 22, 25-28 and 33. In the final Office Action mailed on June 2, 2006 (Paper No. 20060526), the Restriction was made final.

The applicant respectfully submits that the Restriction Requirement is improper because there is no serious burden as required by MPEP 803 and because the Groups of claims are not related as combination and sub-combinations as alleged by the Examiner. Each of these issues is addressed below.

***Improper Conclusion as to Groups being Combination and Sub-combinations***

The Examiner concludes that the claims of Group I are a combination of sub-combinations of Groups II and III. (See Paper No. 01052006, page 2.) This is incorrect. MPEP 806.05(a) provides that a "combination is an organization **of which a subcombination or element is a part.**" (Emphasis added.) The claims of Groups II (10, 13, 22, 25-28 and 33) and III (14-20, 23, 24, 31 and 32) are not parts of the claims of Group I (4-9, 11, 29 and 30).

***No Serious Burden***

MPEP 803 provides that if the search and examination of the application can be made without serious burden, the Examiner **must** examine it on the merits, even if it may include claims to independent or distinct inventions. In this instance, the Examiner has already examined the subject matter of the pending claims and has addressed the pending claims in earlier office actions. The applicant assumes that these office actions were complete as required by MPEP 707 and 37 C.F.R. § 1.104.

Further, the Restriction Requirement misclassified the claims into separate subclasses of claims 709. All of the claims pertain to comparing configurations of a device,

such as a data forwarding device for example. Even assuming, arguendo, that the Restriction Requirement properly classified the claims, the applicant respectfully notes that the Examiner already searched both class 709, subclass 220 (into which the claims of Group III were classified) and class 709, subclass 238 (into which the claims of Group II were classified). (See the "SEARCHED" section of the file wrapper initialed by the Examiner (copy of record).)

In summary, the Restriction Requirement misclassifies the groups of claims (which all pertain to comparing configurations of a device) into separate subclasses of class 709. Even if the classification of the groups of claims is proper, there would be no serious burden on the Examiner to examine all of the pending claims because (1) the subclasses into which the Examiner classified the claims of Groups II and III were already searched by the Examiner and (2) the Examiner already examined all of the pending claims.

In accordance with 37 C.F.R. § 1.144, this petition is not filed later than appeal.

The Office is hereby authorized to charge fees for this petition to Deposit Account No. 50-1049.

***Conclusion***

In view of at least the foregoing reasons, the applicant respectfully submits that the Restriction Requirement is improper and requests that the Director direct the Examiner to withdraw it.

Respectfully submitted,

September 5, 2006

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**CERTIFICATE OF FACSIMILE TRANSMISSION**

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